

performance appears to indicate that it is engaging in discriminatory practices on the basis of an analysis of its Annual Employment Report. ³ In view of OMB's action and the fact that the Commission had recently established new EEO requirements for cable television systems, the Commission adopted a Notice of Proposed Rule Making (Notice) on November 14, 1985, to consider revisions to its broadcast EEO procedures. ⁴

4. In the Notice, the Commission stated that in considering revisions to its broadcast EEO reporting and monitoring procedures it was primarily concerned with a licensee's overall EEO efforts rather than simply the numerical composition of its workforce. The procedures proposed in the Notice were intended to develop new requirements that would address OMB's concerns for minimizing reporting burdens and provide the Commission with sufficient information to monitor EEO activities. Consistent with this

comment period in this proceeding, OMB submitted comments regarding the reporting requirements proposed by the Commission.

6. In its comments, OMB criticizes the proposed Form 396, stating it believes that: 1) preparation of the required submission would be burdensome on licensees; 2) the submitted responses would not be very useful because broadcasters could carefully craft responses to be technically true while not revealing their shortcomings in EEO performance; and 3) the Commission would not be likely to have sufficient resources to make meaningful use of the information it receives. OMB also comments that the proposed form does not appear to significantly reduce the paperwork burden on broadcasters, and may actually increase the burden. Finally, in OMB's view, the proposed form does not give broadcasters a clear and simple explanation of the Commission's EEO requirements. To remedy the deficiencies it sees in the Commission's proposed Form 396, OMB submitted its own alternative proposal for the Form 396 that would ask for brief responses in a format similar to that of the 10-point Model EEO Program Report and would also permit licensees to submit alternative data. The Commission examined this proposal and concluded that it warranted further consideration. Accordingly, on October 31, 1986, the Commission adopted a

DISCUSSION

8. Upon examination of the record in this proceeding, we believe that it is appropriate to adopt revised EEO policies and procedures that emphasize licensees' efforts to operate in a nondiscriminatory manner. The requirements and procedures which we are adopting herein are modifications of the proposals set forth in the Notice and Further Notice in response to the comments we received in this proceeding. We believe that the amended rules and reporting requirements will provide us with the means to improve the effectiveness of our EEO policies and monitoring activities in a manner that will limit the paperwork burden on licensees necessary to the accomplishment of that objective.

9. EEQ Rules. In the Notice, the Commission proposed to incorporate into Section 73.2080 of its rules relating to EEO requirements the general guidelines concerning EEO policies and practices that are included in the existing 5-point and 10-point Model Program Reports. The proposed rule provisions included general EEO policy requirements and suggestions for specific practices to ensure compliance with such policies. The Commission indicated that it believed that inclusion in the rules of the specific EEO requirements and the suggested guidelines for meeting them would provide licensees with adequate information to develop satisfactory EEO programs. Therefore, it stated that the 5-point Program Report no longer appeared necessary and, consistent with its desire to minimize the reporting burden, that this report could be eliminated.

10. Those parties commenting on this issue generally support the Commission's proposal, although many commenters suggest modifications to specific sections of the proposed rules. Seven broadcast station licensees filing jointly (Joint Licensees) object to the inclusion of suggested "guidelines" in the rules because they believe it represents a regulatory expansion that runs counter to the Commission's efforts to reduce its rules. The Joint Licensees also contend that over time these suggested means for carrying out EEO policy will become standards of compliance. They believe

it would be more appropriate to include these guidelines only in the instructions to the reporting requirements. ⁸

11. Many broadcasting commenters oppose provisions in the proposed rules that, for the first time, would effectively require a licensee to disseminate its EEO program to "those with whom it regularly does business" and to analyze its efforts to "use the services of minorities and women." ⁹ They argue that such provisions would extend EEO program requirements to non-employment transactions and that such action would exceed the Commission's jurisdiction. ¹⁰ The law firm of Dow, Lohnes & Albertson (DLA), representing various broadcast licensees, argues that such provisions would go beyond the scope of the Commission's present EEO rules which are currently limited to licensees' employment practices. A number of these commenters also contend that the need for these provisions are baseless since there is no indication of discrimination in station's use of entrepreneurs' services. However, National Public Radio (NPR) believes that

on the rules that govern EEO practices for the cable industry ¹¹ and that there is no statutory mandate for a comparable requirement for broadcasters. DLA, therefore, asserts that this requirement is inappropriate for broadcasters and that the Commission cannot justify the imposition of such a significant burden of data collection, maintenance of records, and evaluation on them. DLA further argues that the proposed comparison on a job category basis is contrary to established Commission precedent that focuses the review of licensees' employment policies on its overall employment profile.

12 Broadcast commentators generally support the proposal to eliminate

15. In deciding to include specific EEO requirements in our broadcast rules, it is our intention not to alter the broadcasters' current EEO obligations, and particularly to avoid areas not directly related to the employment practices of the station. We agree with the arguments raised by many broadcast interests that the inclusion of EEO program requirements for a broadcast licensee to disseminate its EEO program to those with whom it regularly does business and to use the services of minorities and women entrepreneurs are not related to station employment. Our concern in the matter of broadcast EEO policy is directed primarily at a broadcast licensee's efforts and practices in recruiting, hiring, and promoting within its own station(s). 13

16. We do not believe, as some commenters contend, that it is necessary to amend the proposed rules to clarify that the program elements specified therein are suggested activities that may be used to fulfill a licensee's EEO obligations. As written, the rules plainly indicate that the

characteristics of the station and its local service area. For this reason, our listing of suggestions for meeting the EEO requirements is not intended to be either exclusive or inclusive but simply to provide guidance.

Reporting Requirements

17. Annual Employment Report. In the Notice, we proposed to continue to require licensees to file Annual Employment Reports and to make several modifications to this reporting requirement. The proposed new Form 395-B would continue to require stations to identify the number of employees by race/national origin and sex in the same nine job categories as the existing broadcast Annual Employment Report. However, we proposed to revise this report to conform to the format used by the Equal Employment Opportunity Commission (EEOC) on its Form EEO-1. Under this proposal, employment statistics for full-time and part-time employees would be combined on a single table and the data would be rearranged to conform with the data table on the EEO-1 form. In addition, we proposed to modify the existing procedures to permit stations with fewer than six full-time employees, rather than five as is currently the case, to complete only the identification and certification portions of the annual employment form. Further, we sought comment on whether we should continue to require the filing of Annual Employment Reports by headquarters, regional, and national offices, as is required under existing rules.

18. Approximately half of the commenters responding to the Notice

~~advised the proposed Form 395-B. EEOC comments that the existing reporting~~

19. The National Association of Broadcasters (NAB) and other broadcasting interests support the Commission's proposal to increase the reporting threshold from five to six full-time employees. HB&P submits that while a change in reporting threshold from five to six would be a step in the right direction, it would only affect about one percent of all broadcast licensees. HB&P and the Broadcast Financial Management Association (BFMA) suggest that the threshold be increased to ten, especially if full-time and part-time employees are combined. KBW Associates suggests that a tiered system of reporting thresholds be implemented based on station type. UCC and CCC comment that this proposal ignores the fact that small broadcast stations often afford the greatest employment opportunities for minorities and women and oppose raising the reporting threshold on that ground.

20. NAB and several additional parties representing broadcast interests support deletion of the requirement that headquarters units file Annual Employment Reports on the basis that the focus of EEO performance is on the employment practices of individual stations and that the Commission itself stated in the Notice that headquarters data are seldom considered in EEO monitoring. They submit that this requirement, thus, is inconsistent with the policy of only requiring submissions that are for regulatory purposes. The Gannett Co. and Lee Enterprises (Gannett/Lee) also note that headquarters units typically employ relatively few people. On the other side of this issue, CCC and several other parties representing minority and women's interests state that headquarters data should continue to be filed since they indicate a group owner's propensity to operate in the public interest. Further, NBMC states that since headquarters are often located in major cities with substantial minority populations, these jobs present an opportunity for minority entry into the broadcasting industry. UCC/NCC and the National Association of Black Owned Broadcasters (NABOB) contend that data from headquarters, regional, and national offices will indicate whether minorities are rising to the most important managerial and professional positions and the employees at these facilities have a major influence over the selection of programming. Finally, DLA and AWRT state that the consolidated reports can be eliminated since they are the mathematical summation of the data from a company's EEO units.

21. After consideration of the comments on our proposed revisions to the Annual Employment Report, we have decided to retain the existing reporting requirements for individual stations with only minor revisions to conform the statistical tables to the format of the EEO-1 form. ¹⁵ Licensees will be required however to report employment statistics for full-time and part-time employees on separate tables. Upon further

¹⁵ The revised Annual Employment Report (Form 395-B) is shown in Appendix D.

contemplation of this matter, we believe that there is an important distinction between full-time and part-time employees in the broadcast industry. For our purposes, it is important to be able to review a station's employment statistics for its full-time employees separately. Unlike employment patterns in the cable industry, part-time employees generally constitute a significant portion of the total workforce at most broadcast stations. For example, of the 206,135 total employees in the broadcasting industry in 1985, according to the Annual Employment Reports, 35,368, or more than 17%, were part-time employees. Therefore, licensees could potentially improve their overall employment profiles by hiring minorities and women only on a part-time basis. If the data were consolidated, we would not be able to detect this practice. We conclude that in order to adequately monitor broadcast stations' EEO efforts, it is necessary to collect separate data for full-time and part-time employment. Thus, we are making no changes in the information collected on the annual report. However, as a matter of administrative convenience for our own use and for stations that also report to the EEOC, we will reformat the tables to order the categories to conform to EEOC's Form EEO-1. In order to implement these changes, we are instituting a new Form 395-B so that we may preserve the existing Form 395, which also is used for submission of annual employment data by some common carrier licensees. 16

22. With respect to raising the reporting threshold from five to six, we recognize that small broadcast stations often offer opportunities for entry by women and minorities to employment and careers in the broadcast field. We also note that the proposal to raise the reporting threshold in the Notice was based on modifications we made regarding the filing requirements for cable systems as set forth in the Cable Act. We have no equivalent statutory directive with regard to broadcast stations. In addition, since the number of stations that would be affected by this proposal is small, we do not believe that such a change would appreciably alleviate the administrative burden imposed on the industry by the EEO reporting requirements. Accordingly, the reporting threshold of five full-time employees will be retained.

23. Finally, we will no longer require the filings of Annual Employment Reports on a consolidated basis. Our monitoring efforts are directed primarily to the individual broadcast station and the consolidated reports are not useful in this respect. However, we believe it is important for us to continue to be informed of the licensee's employment profile at its headquarters office with respect to those personnel who have an operating effect on owned and operated stations. Thus, we will continue to require the filing of Annual Employment Reports for those headquarters employees whose primary duties lie in the operation and/or

16 See footnote 1, supra.

management of the individual broadcast stations. 17

24. Commission's Proposed Broadcast EEO Program Report. The Commission proposed to replace the 10-point Model EEO Program Report with a new four-part Broadcast EEO Program Report (Form 396) that would be filed at the time of license renewal. The Commission recognized that the proposal for this new program report did not fully comport with OMB's position that information beyond that submitted on the Annual Employment Report should only be required in cases where analysis of those data suggests discriminatory behavior by the licensee. However, it stated that additional data are needed to assess a station's EEO performance in a manner that emphasizes efforts over statistics.

17 On February 12, 1987, the Office of Communication of the United Church of Christ submitted a Petition for Rulemaking and Related Relief requesting that the Commission initiate a proceeding to institute rules by which it would engage in mandatory oversight and review of network hiring practices using the Annual Employment Reports currently filed by broadcast network headquarters. Additionally, UCC requests that the Commission redefine its "reasonableness" standard for evaluating EEO activities of licensees with more than ten full-time employees. In examining UCC's petition, we note that the focus of our EEO policies and Commission regulatory oversight is on individual broadcast stations and does not extend to related segments of the mass media industry, even where units of related segments, such as network program services, may be owned and operated in common with broadcast stations. Under the revised EEO reporting requirements we are adopting herein, broadcast networks will continue to file employment data in their role as group owners. The revised headquarters reports to be filed by networks will provide sufficient information to discern employment patterns in personnel involved in operation of the local stations operated by networks and other group owners and will limit the information collected consistent with that objective. We may, however, choose to reexamine these issues at some point in the future should circumstances so warrant. Regarding UCC's request for a redefinition of the reasonableness standard, we find such action unnecessary in view of our decision herein to revise our broadcast EEO evaluation procedures. As discussed below, the new evaluation procedures will examine several different indicia of a licensee's efforts, rather than focus primarily on its employment statistics. Our processing principles will be used solely for internal administrative purposes in this

25. As proposed, employment units with fewer than six full-time employees would only be required to complete the identification and certification portions of this form. Other licensees would be required to provide information regarding their EEO policies and practices. In brief, the proposed new Broadcast EEO Program Report (Form 396) would consist of four parts: (1) a series of questions requiring "yes" or "no" answers concerning the station's activities under the EEO program requirements; (2) a request for brief descriptions of the duties and responsibilities of employees in certain job categories; (3) a series of questions concerning the licensee's EEO practices requiring short written narrative answers; and (4) a section providing Metropolitan Statistical Area (MSA) labor force data

27. Several parties representing public interest groups and a few broadcasters state that the existing procedures have been extraordinarily effective in promoting nondiscriminatory employment opportunities in the broadcast industry and that major modifications do not appear necessary. Broadcast interests comment that the proposed Form 396 would create a substantial new administrative and recordkeeping requirement that would contradict the Commission's stated objective and would not be responsive to the concerns expressed by OMB. HB&P does not believe that the new questions will materially assist the Commission in evaluating a station's overall EEO efforts and that only licensees whose employment profiles fall outside the Commission's processing guidelines should be required to submit additional data. DLA submits that to the extent that the existing requirements do not request sufficient information about a particular licensee's employment practices, the Commission can always request additional information as it has done in the past. DOJ and BFMA also contend that data beyond that on the Annual Employment Report should be requested only in cases where the Commission has reason to believe that the licensee is discriminating against employees or applicants.

28. Some parties, including NPR and the commenting public interest groups, contend that the proposed Form 396 would not provide the Commission with sufficient information to evaluate licensees' EEO activities. In particular, the National Association of Hispanic Journalists (NAHJ) and the Mexican American Legal Defense and Education Fund (MALDEF) assert that the simple "yes" responses requested in Part I would not give the Commission a benchmark from which to measure a licensee's progress in furthering equal employment opportunity and that a complete narrative should be required for all the questions posed in this section. NPR supports the proposal to request job descriptions because the categories on the Annual Employment Report are not specifically tailored for the broadcast industry. NBMC submits that the Commission should ask each licensee to respond to all the narrative response questions in Part III because answers to each of these questions listed would be important for a meaningful review of a licensee's EEO efforts.

29. Broadcasters generally support our proposal to supply licensees with MSA labor force data. They also support the proposal to permit licensees to submit alternative labor force data because it would serve the Commission's goal of improving the accuracy and reliability of its EEO monitoring activities. These commenters generally observe that the licensee is most familiar with the recruitment realities of its particular situation and, therefore, is most able to define the area within which it is reasonable to seek prospective employees. CBS and NAB comment that licensees should be permitted to use national data for the available labor force with respect to certain high level managerial and technical positions where it can be demonstrated that such positions are filled from a nationwide pool of applicants. On the other side, NPR opposes permitting licensees to submit alternative labor force data except in extreme circumstances.

30. Comments on OMB's Proposed EEO Program Report. The alternative Form 396 proposed by OMB is styled after the existing 10-point Model EEO Program Report and is intended to reduce the emphasis on reporting numbers rather than efforts. OMB's suggested form integrates the instructions into the form in a manner designed to remind station management of the Commission's EEO requirements and to emphasize that effective affirmative actions in policy dissemination and recruitment are mandatory. Under this proposal licensees would be required to indicate whether they follow specific EEO practices in accordance with the rules and would be required to provide some additional information concerning specific activities in furtherance of these responsibilities. OMB's proposed program report also incorporates the system for reporting local labor force data from the Commission's own proposal. 18

31. Most of the commenters responding to the Further Notice appear to prefer the existing form or a revised version of that form similar to OMB's proposal over the form proposed in the Notice. NAB supports retention of the current form, but finds the rephrasing used by OMB to be an acceptable alternative. BFMA agrees with OMB's position that the Commission should only collect detailed information when a licensee appears to be engaging in

also believes that a station's submissions regarding its EEO practices are essentially the only means the Commission has to evaluate whether a station's performance is in the public interest and that the information requested in the OMB proposal is less likely to reveal shortcomings in a station's EEO performance than the information solicited in the Commission's proposal. In its comments, the EEOC questions whether the OMB proposal would provide the Commission with sufficient information to determine if a licensee is complying with all aspects of the EEO rules. EEOC observes that the OMB proposal does not request information regarding several EEO requirements that a licensee's EEO program is supposed to address, including data concerning the hiring and promotion of minorities and women.

33. Several commenters express concerns regarding OMB's elimination of the current employment survey, hiring, and promotion data that we now collect. NAB and EEOC recognize that elimination of the requirement that licensees submit these data might lessen the reporting burden. However, they state that it is unclear whether or not the Commission will be able to satisfactorily evaluate a station's EEO efforts without these data. NPR comments that without the current employment survey, the Commission and the public would not have any basis for determining whether a station's EEO performance is adequate. NPR also believes that the elimination of the submission of the current employment survey indicates that it is not important for a station to assess the impact of its EEO policies and practices. UCC conjectures that OMB probably eliminated the current employment survey because it mistakenly believes that the equivalent data are available on the Annual Employment Reports. However, UCC contends that these data may be out-of-date by the time that the license renewal application is considered and that the current employment survey is needed to provide a complete picture of the applicant's EEO track record. Further, NPR, NBMC, UCC, and NAB agree with our statement in the Notice that the Annual Employment Reports do not provide sufficient data to determine the number of hires and promotions during a 12-month period. 19

34. The Joint Parties and BFMA concur with OMB that the submission of

has not shown how these data would be used in detecting or deterring discrimination that would not be detected or deterred by other agencies.

35. The New EEO Program Reporting Requirement. We have reexamined our initial proposal for EEO program reporting, the OMB proposal, and the comments submitted in this proceeding and have decided to adopt a new form that follows the general approach of the existing 10-Point Model EEO Program Report and OMB's proposal for this reporting requirement. The new Broadcast Equal Employment Opportunity Program Report (FCC Form 396) is similar to the program report proposed by OMB in that it integrates the instructions into the form and it requires licensees to indicate those activities that they use to implement various elements of their EEO programs.²⁰ The principal differences between the new program report and the form proposed by OMB is that we have eliminated the separate section requesting information about

force is less than five percent, the licensee may choose not to file EEO program information for minority groups. In such cases, the form is to be completed using only the information regarding the station's EEO program directed towards women.

37. Part I of Form 396 requests that the station submit the name and title of the individual at the station responsible for EEO. Part II relates to the dissemination of the station's EEO policy. Licensees indicate which of several specific practices listed on the form they use to disseminate their EEO policy to applicants and employees. Similarly, in Part III stations indicate which of a series of specific practices they use in their efforts to recruit minorities and women. Both Parts II and III have space for licensees to indicate practices other than those specified by the Commission.

38. Part V of OMB's proposed program report would have required licensees to provide information relating to any optional training programs they may conduct. Because training programs are optional and are only feasible for a limited number of stations with sufficient resources, we will not include training as a separate section on the new form. However, we are including training programs as an example of the additional information the licensee may provide to assist the Commission in its evaluation of the station's EEO efforts under Part VIII of this report.

39. Parts IV and V of the new Form 396 require stations to submit statistics regarding hiring and promotions, respectively, over a 12-month period. Licensees report the total number of employees hired, the total number of minorities hired, and the total number of women hired. We also are requesting the total number of positions filled in the upper four job categories, the number of minorities hired in the upper four job categories, and the number of women hired in these job categories. Equivalent data must be submitted for the total number of promotions and promotions within the upper four job categories. OMB claimed that the Commission could ascertain information regarding hiring and promotions from the Annual Employment Report. However, we find that the actual number of hires and promotions cannot be reliably determined from those data.²¹

40. Part VI concerns available labor force data in the market where the station is located. In the Notice, the Commission stated that it would supply each licensee with the pertinent labor force statistics for the MSA

²¹ For example, the data on the annual report would not indicate a promotion within a particular job category. Similarly, if a minority or female employee left a station and their position were filled by an individual with the same race/national origin and sex characteristics, it would not show up as a net change in the station's employment.

or county where it is located. The licensee would then be able to use these data in its own evaluation of its employment profile and efforts. The Commission has further investigated the possibility of supplying licensees with labor force data. At this time, we do not have the administrative resources, including the data processing capability, to provide these data to licensees when license renewal applications are sent to them. We hope to eventually be able to implement this proposal in order to lessen the burden on licensees. However, for the time-being, licensees will continue to be responsible for obtaining their own data from local sources for their own evaluations, as they have done previously. The Commission will continue to use MSA data, or county data in cases where the station is not located in an MSA, in its evaluation of EEO efforts.

41. We also proposed to permit licensees to submit alternative data with an appropriate explanation if they believed that the MSA or county data would not accurately reflect the available labor force. We are adopting this proposal and licensees may submit alternative data with an explanation of why such data are appropriate with this program report. In this respect, we generally believe that alternative labor force data may be appropriate in instances where: 1) the distance of the station from areas with significant minority population in the MSA is great; 2) commuting from those areas to the station is difficult (such difficulties may be based on distance but may also be based on other factors such as lack of public transportation); or 3) recruitment efforts directed at the MSA minority labor force have been fruitless. If the Commission is satisfied by the licensee's showing, then it will use the alternative data in its examination of the station's workforce statistics. We wish to emphasize that submission of alternative labor force data is strictly optional and at the licensee's discretion. Furthermore, should a licensee choose to submit alternative labor force data, the burden will be on the licensee to justify the use of such alternative data.

42. Licensees must provide a brief description of any complaint alleging discriminatory employment practices in Part VII of their EEO program report. Such descriptions must include information regarding the persons involved, the date of the filing, the court or agency where it was filed, the file number, and the disposition or the current status of the matter. Licensees also must include information regarding all complaints filed or pending since their previous license renewal was granted.

43. The final section of the Broadcast EEO Program Report, Part VIII, asks licensees to describe any other information that they believe will assist the Commission in its evaluation of their efforts to provide equal opportunity in employment and to fulfill their obligations under the Commission's rules. Responses under this part are optional. We have included in Part VIII some examples of the type of information that licensees may choose to submit in response to this section.

Evaluation of EEO Efforts

44. In the Notice, the Commission emphasized that its principal concern in monitoring the EEO activities of broadcasters is with the good faith efforts of licensees to hire and promote in a nondiscriminatory manner. Accordingly, we stated that our evaluation of a station's activities in this area would be based on information submitted on the Broadcast EEO Program Report, the Annual Employment Report, any adjudicated findings of discrimination, and any further information that we might obtain through investigative requests or that the station may provide. We also proposed to continue to use our EEO guidelines solely as an administrative tool for identifying those stations whose EEO efforts might require further review.

45. Regarding the Commission's proposed procedures for evaluating licensee's EEO efforts, several commenters believe that the use of processing guidelines will result in hiring quotas. DOJ and the Anti-Defamation League of B'nai B'rith (ADL) comment that even the limited use of parity statistics, such as our processing guidelines, has the unintended result of operating as a de facto hiring quota. DOJ claims that broadcasters, in order to avoid the inconvenience and expense of being subjected to further review, will treat the processing guidelines as "safe-harbors." Accordingly, DOJ recommends that the Commission use the reported employment statistics as a basis to trigger a further investigation into whether the broadcaster is intentionally discriminating against persons on a prohibited basis, but that there should be no rigid numerical formula triggering that review. Further, DOJ suggests language to be added to our EEO rules stating that no broadcaster shall be determined to have violated the EEO requirements on the basis of its failure to attain any specified statistical measure. BFMA concurs with DOJ on this point and states that the Commission should only require licensees to take positive steps to assure that minorities and women are given equal consideration for available jobs and that the station's practices promote such opportunities.

46. UCC/NCC disagrees with the contention that the use of parity statistics will result in de facto hiring quotas. The NAACP Legal Defense and Educational Fund (LDF) states that the use of the Commission's processing guideline as a method to "red flag" those stations that should receive more extensive review has been approved repeatedly by the Courts. 22

22 See, e.g., National Black Media Coalition, 775 F.2d at 346-47 (D.C. Cir. 1985), Bilingual Bicultural Coalition v. F.C.C., 595 F.2d at 629-30 (D.C. Cir. 1978), Stone v. F.C.C., 466 F.2d 316, 332 (D.C. Cir. 1972). See also Teamsters v. United States, 431 U.S. at 339 n. 20 (1977).

47. NAB and BFMA believe the Commission should specify how it will use any alternative labor force data submitted by the licensee in its evaluation. NAB also states that it supports the Commission's desire to go beyond numbers in its review of EEO performance. However, it seeks clarification of how the court-ordered "zone of reasonableness" concept will be incorporated into this process. ²³ NAB notes that in the past the Commission has considered a station whose employment profile meets or exceeds the processing guidelines to have made a prima facie case of employment within this zone. NAB believes that we should either reaffirm this policy or articulate and rationalize any new policies.

48. We will evaluate broadcast licensees' EEO efforts based on several different indicia using a two-step approach similar to that which we adopted for certification of compliance with EEO requirements by cable entities. ²⁴ The first step will be to make an initial evaluation of a station's efforts based on the full range of information available concerning its EEO record. This evaluation will examine the descriptions of the station's EEO program and policies as submitted on its Form 396 program report, any EEO complaints filed against the station or licensee, the composition of the station's workforce as submitted on its Annual Employment Report, the composition of the available labor force in the station's area, and any other pertinent information that may be available concerning the station's EEO activities. If our first-step evaluation indicates that the station's EEO efforts are satisfactory, the station will be accepted as having fulfilled its obligations in this area and no further analysis or investigation will be performed. However, if the initial evaluation indicates that a station's efforts may have been less than satisfactory, it will be subjected to a second-step investigation of those areas of responsibility where its efforts appear deficient. This investigation will involve requests that the licensee submit additional information to the Commission concerning the specific areas of its EEO program that appear deficient.

49. This two-step procedure will minimize the overall EEO reporting burden imposed on the broadcast licensees by requiring stations making plainly satisfactory efforts to submit only sufficient information to verify these efforts. We believe this approach will provide the most cost-effective means of monitoring broadcast EEO efforts from the standpoint of the burden imposed on licensees by information collection requirements and of our own administrative resources and will improve the effectiveness of our EEO activities.

²³ See Stone v. FCC, supra and Bilingual Bicultural Coalition on Mass Media v. FCC, supra at 621, 627 n.15.

²⁴ See Report and Order in MM Docket No. 85-61, supra at paragraphs 76-81.

50. As part of the initial evaluation, each station's workforce will be compared with the available labor force in its MSA, or with other labor force data upon submission of acceptable alternative figures, using our EEO processing guidelines.²⁵ However, these guidelines will be used solely for administrative purposes, that is, in determining which stations it may be necessary to examine more closely under the second step evaluation procedures. Under the revised procedures, each station's record will be fully examined regardless of its employment profile and even if this profile is within our processing guidelines. Thus, our assessment of a licensee's EEO performance will not be determined solely on the basis of quantitative tests. Rather, these guidelines will be used to ensure consistency in the initial review of station employment data. They should not be interpreted as quotas or numerical goals to which the licensee is subject and their use is not intended to imply that stations meeting the specific employment levels thereunder necessarily will be considered to have satisfied their EEO obligations. We are aware of the concern expressed by DOJ and BFMA that our processing guidelines might be interpreted as quotas and numerical guidelines. Our discussion herein should be adequate to clarify that our policy with respect to evaluation of broadcaster's EEO efforts should not be interpreted to allow the use of the guidelines as either quotas or as a "safe harbor." Thus, we do not find it is necessary to adopt the proposal of DOJ and BFMA to qualify our use of these guidelines in our rules. We believe that to do so would institutionalize the numerical processing guidelines, contrary to their intended and our stated purpose.

PROCEDURAL MATTERS

51. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

1. Need for and purpose of the rules. This proceeding is intended to address the concerns raised by OMB in its disapproval of the use of the Commission's 5-point and 10-point program reports for routine data collection. This proceeding also seeks to include in the new reporting requirements only those informational elements that are necessary for the effective monitoring of licensees' EEO efforts.

11. Summary of issues raised by public comment in response to the initial regulatory flexibility analysis, Commission assessment, and changes made as a result.

²⁵ The Commission's current administrative processing guidelines are set forth in Public Notice No. 1364, December 15, 1983.

A. Issues Raised. Only one commenter, Jefferson-Pilot Communications Company, raised issues specifically in response to the initial regulatory flexibility analysis. In these comments, it states that it believes that the reporting requirements proposed by the Commission in the Notice will have a disproportionately burdensome impact on smaller stations without producing either reliable information useful to us or enhancing EEO at the station level. Other parties also contend that the Commission's proposals, especially its proposed EEO Program Report, will impose a significant additional paperwork burden on licensees.

B. Assessment. Our reexamination of our initial proposals, in light of the comments received, indicated that our proposals were not the least burdensome means to request relevant data from broadcast stations regarding the EEO activities.

C. Changes made as a result of comment. As a result of the comments in this proceeding, we are adopting alternative reporting requirements intended to improve the effectiveness of our EEO monitoring and to the extent possible reduce the burden on both licensees and our administrative resources. In particular, the Broadcast EEO Program Report we are adopting is a revision of our existing 10-Point Model EEO Report, Form 396, which integrates the instructions and guidelines within the form, similar to the proposal submitted by OMB. We will also continue to require applicants for new or existing broadcast stations to file the 5-point Program Report because we believe that this report serves the important purposes of informing these applicants of the our EEO requirements, affirming their understanding of these obligations, and assisting them in the establishment of an EEO program.

111. Significant alternatives considered and rejected. We have considered all the alternatives presented in the Notice, Further Notice, and comments in this proceeding. After full consideration of all of the issues raised throughout the course of this proceeding, we have adopted the rules and reporting requirements that we believe are the most reasonably fashioned in light of the facts and issues presented.

52. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burdens on the public. Implementation of these new/modified requirements and burdens will be subject to approval by the Office of Management and Budget as prescribed by the Act.

53. The Secretary shall cause a copy of this Report and Order, including the Final Regulatory Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Paragraph 603(a) of the Regulatory Flexibility Act (Pub.L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§601 et seq., (1981)).

54. Accordingly, IT IS ORDERED that under the authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, Part 73 of the Commission's Rules and Regulations IS AMENDED as set forth in the attached Appendix B, subject to approval by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980. These rules and regulations ARE EFFECTIVE August 3, 1987. 26

55. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

Attachment: Appendices

26. Until the new FCC Form 395-B, new FCC Form 396, and revised FCC Form 396-A are available for distribution, licensees and applicants will continue to use the existing forms to satisfy our reporting requirements.

APPENDIX A

List of Commenters

Comments - Notice of Proposed Rule Making

1. University of Michigan (Represented by Dow, Lohnes & Albertson)
2. Multimedia, Inc. (Represented by Dow, Lohnes & Albertson)
3. Cox Communications, Inc. (Represented by Dow, Lohnes & Albertson)
4. Central California Educational TV, Lehigh Valley Public
Telecommunications Corporation. Milwaukee Area District Board of

Reply Comments - Notice of Proposed Rule Making

1. Office of Communication of the United Church of Christ and the Communications Commission of the National Council of Churches
2. NAACP Legal Defense Fund
3. National Association for Better Broadcasting, the League of United Latin American Citizens, the National Association for the Advancement of Colored People, Chinese for Affirmative Action, the NOW Legal Defense and Education Fund, and the Women's Legal Defense Fund (Citizens Communications Center)
4. Broadcast Financial Management Association

Comments - Further Notice of Proposed Rule Making

1. National Association of Broadcasters
2. National Public Radio
3. Broadcast Financial Management Association
4. National Black Media Coalition
5. Cox Enterprises, Inc., Multimedia, Inc., Public Broadcasting of Northwest Pennsylvania, Inc., South Carolina Educational Television Commission, and State of Wisconsin Educational Communications Board (Joint Parties)
6. Office of Communication of the United Church of Christ
7. Draper Communications, Inc.

Reply Comments - Further Notice of Proposed Rule Making

1. U.S. Equal Employment Opportunity Commission
2. National Association for Better Broadcasting, the League of United Latin American Citizens, the National Association for the Advancement of Colored People, Chinese for Affirmative Action, the NOW Legal Defense and Education Fund, and the Women's Legal Defense Fund (Citizens Communications Center)

APPENDIX B

47 CFR Part 73 is amended to read as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 73.2080 is amended by revising it to read as follows:

§73.2080 Equal employment opportunities.

(a) General EEO policy. Equal opportunity in employment shall be afforded by all licensees or permittees of commercially or noncommercially operated AM, FM, TV, or international broadcast stations (as defined in this part) to all qualified persons, and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin, or sex.

(b) EEO program. Each broadcast station shall establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity in every aspect of station employment policy and practice. Under the terms of its program, a station shall:

- (1) Define the responsibility of each level of management to ensure a positive application and vigorous enforcement of its policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance;
- (2) Inform its employees and recognized employee organizations of the positive equal employment opportunity policy and program and enlist their cooperation;
- (3) Communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, or sex, and solicit their recruitment assistance on a continuing basis;
- (4) Conduct a continuing program to exclude all unlawful forms of prejudice or discrimination based upon race, color, religion, national origin, or sex from its personnel policies and practices and working conditions; and
- (5) Conduct a continuing review of job structure and employment practices and adopt positive recruitment, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility.

(c) EEO program requirements. A broadcast station's equal employment opportunity program should reasonably address itself to the specific areas set forth below, to the extent possible, and to the extent that they are appropriate in terms of the station's size, location, etc.:

- (1) Disseminate its equal opportunity program to job applicants and employees. For example, this requirement may be met by:
- (i) Posting notices in the station's office and other places of employment,